IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2569 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD
Versus
MANJULABEN NILESH OZA,WD/O NILESH R OZA

Appearance:
MR PV NANAVATI for Appellant No. 1
MR VIBHUTI NANAVATI for Appellant No. 1
MR SURESH M SHAH for Respondents No. 1 to 5

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 16/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the respective parties. Appeal admitted. Mr. M.S. Shah appears for the respondents - original claimants and waives service of notice in the Appeal. On a joint request of the learned counsel, this appeal is taken up for final hearing today.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 at the instance of the Insurance Company, challenging the judgment and award of the Motor Accident Claims Tribunal, Kachchh at Bhuj given under Section 163-A of the Motor Vehicles Act (as amended in 1994). The appellant insurer contends that the impugned award under Section 163-A has been delivered by the Tribunal as an interim award by passing the same as an order at Exh.6/D in the main claim petition which has been filed under Section 166 of the Motor Vehicles Act, which is yet pending. The main claim petition is numbered as Motor Accident Claim Petition No.683 of 1999 whereas the impugned judgment and award under Section 163-A (at Exh.6/D) is numbered as I.R. No.496 of 1999.

3. The contention raised in this regard is that an award under Section 163-A cannot be regarded to be an interim award nor can it be regarded to be subject to adjustment against an award that may be passed in a petition filed under Section 166 of the Act.

4. This is a contention which we are bound to accept in view of the decision of the Supreme Court in the case of The Oriental Insurance Company Ltd. vs. Hansrajbhai Kodala reported in 2001 (4) JT Page 477.

5. In the premises aforesaid, in view of the clear position of law laid down by the Supreme Court, the impugned judgment and award is required to be quashed and set aside. We hold and direct accordingly. This appeal is, therefore, allowed with no order as to costs.

6. The learned counsel for the respondents - original claimants states that the claimants desire to pursue the Main Claim Petition No.683 of 1999 on merits and in accordance with law and to obtain a judgment thereon. The Motor Accident Claims Tribunal will accordingly proceed in respect thereof in accordance with law. It shall be open to the original claimants to apply to the Tribunal for an expeditious hearing of the main claim petition.

7. The appellant may apply to the Tribunal for

refund of the amount deposited by it with the Tribunal. The Tribunal shall deal with such application, as and when made, in accordance with law.

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